



**CAPE WINELANDS DISTRICT**  
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# **PRIVATE WORK AND DECLARATION OF INTEREST(S) POLICY**

## TABLE OF CONTENTS

	Page
1. PURPOSE	3
2. SCOPE AND APPLICATION	3
3. OBJECTIVES OF POLICY	3
4. DEFINITIONS	3
5. LEGAL FRAMEWORK	4
6. PRIVATE WORK	6
7. CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER ROLE PLAYERS	9
8. DECLARATION OF INTEREST(S)	12
9. EFFECTIVE DATE	16

## 1. PURPOSE

- 1.1 To manage and regulate the performance of work done by employees in the service of the Cape Winelands District Municipality (CWDM) outside their employment contract.
- 1.2 To alert employees in the service of the Cape Winelands District Municipality (CWDM) to personal interests that might be affected while they are performing their official duties.
- 1.3 To promote mutual trust and respect and an environment where business can be conducted with integrity and in a fair and reasonable manner.

## 2. SCOPE AND APPLICATION

This policy shall apply to all employees of the Cape Winelands District Municipality (CWDM), including the Municipal Manager and Heads of Department.

## 3. OBJECTIVES OF POLICY

- 3.1 Determine the terms and conditions for dealing with private work applications.
- 3.2 Establish a standard procedure for the application for permission to undertake private work.
- 3.3 Provide for a system of monitoring of private work.
- 3.4 Eliminate the risks associated with the misuse of private work and the non-disclosure of financial and related party interest(s) by employees.
- 3.5 Accept a code of conduct for supply chain management practitioners and other role players.
- 3.6 Provide the reasons and procedure for the annual declaration of financial interest, related party interest and confidentiality by employees.

## 4. DEFINITIONS

For the purpose of this policy-

- 4.1 “**Conflict of Interest**” shall mean a situation that has the potential to undermine the impartiality of an employee because of the possibility of a clash between the employee’s self-interest and professional interest.
- 4.2 “**Council**” shall mean the Council of the Cape Winelands District Municipality (CWDM).

- 4.3 “**Councillor**” shall mean a member of the Municipal Council of the Cape Winelands District Municipality (CWDM).
- 4.4 “**Employees**” shall mean a person in the employment of the Cape Winelands District Municipality (CWDM), either in a permanent, contract or temporary capacity.
- 4.5 “**Municipal Manager**” shall mean a person appointed by the Municipal Council as the Municipal Manager for the municipality in terms of section 54A of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000).
- 4.6 “**Heads of Department**” shall mean all appointees in terms of section 56 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000).
- 4.7 “**Private work**” shall mean work performed by an employee when he/she, apart from his/her official duties at the Cape Winelands District Municipality (CWDM), works for payment outside of his/her normal working hours.
- 4.8 “**Staff member**” shall mean the employees of the Cape Winelands District Municipality (CWDM), including the Municipal Manager.

## 5. LEGAL FRAMEWORK

- 5.1 Item 4(2)(c) of the Code of Conduct for Municipal Staff Members, Schedule 2 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) provides as follows:

*“Except with the prior consent of the council of a municipality a staff member of the municipality may not be engaged in any business, trade or profession other than the work of the municipality.”*

- 5.2 This provision implies that the employee has a fundamental right to do private work and be remunerated for it, however this is countered by the municipality’s sole prerogative to determine conditions on which special permission will be granted.
- 5.3 This in turn implies that it is not a matter of course approval, but that it must be specially granted. Furthermore, employees shall be responsible for the proper and efficient discharge of the work assigned to them by the municipality. This implies that the municipality as employer may legitimately expect the employee to be in a mental and physical condition to properly perform the duties that he/she should be doing.
- 5.4 Item 4(3) of the Code of Conduct for Municipal Staff Members, Schedule 2 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) further provides as follows:

*No staff member of a municipality may be a party to or beneficiary under a contract for the provision of goods or services to any municipality or any municipal entity established by a municipality.”*

- 5.5 Item 5(1) of the Code of Conduct for Municipal Staff Members, Schedule 2 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) provides as follows:

*A staff member of a municipality who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing full particulars of the benefit to the council.”*

- 5.6 Item 5A of the Code of Conduct for Municipal Staff Members, Schedule 2 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) provides as follows:

*“(1) A person appointed in terms of section 56 or a municipal manager must within 60 days after his or her appointment declare in writing to the chairperson of the municipal council the following interests held by that person or municipal manager”*

*Shares and securities in any company;  
Membership of any close corporation;  
Interest in any trust;  
Directorships;  
Partnerships;  
Other financial interest in any business undertaking;  
Interest in property; and  
Subsidies, grants and sponsorships by any organisation.*

*(2) Any change in the nature or detail of the financial interests of a staff member must be declared in writing quarterly to the chairperson of the municipal council.”*

- 5.7 Section 22 of the Constitution of the Republic of South Africa, 1996 provides that any person has the right to choose their trade, occupation or profession freely and that the practice thereof may be regulated by law.

- 5.8 In terms of his/her employment contract with the Cape Winelands District Municipality (CWDM) an employee is required to devote a fixed number of hours of service to the District Municipality.

- 5.9 It is therefore necessary to read the provisions of section 22 of the Constitution of the Republic of South Africa, 1996 together with the provision of legislation that regulate the hours of service, since the latter places a limitation on the right of the individual as mentioned in section 22 of the Constitution.

5.10 Since labour law allows an employer to take action against an employee if the employee fails to deliver his/her hours of service properly or allows another occupation to affect his/her employment relationship with the employer detrimentally, this policy is established to regulate outside work properly.

5.11 No employee is allowed to perform any outside work unless previously officially approved on an individual basis by the Municipal Manager.

## **6. PRIVATE WORK**

### **6.1 Motivation and Conditions for Private Work**

(a) No employee will be granted permission to perform private work after hours that is in direct conflict with his/her profession and/or authority.

(b) Any request to perform private work must be stated in writing and accompanied by sound motivations, according to the following criteria:

(i) The capacity of the employee.

The nature of the official duties of the employee at the Cape Winelands District Municipality (CWDM).

The nature and extent of the proposed private work.

The place(s) where the employee will work and, where applicable, the name of the company/firm where the employee intends to work and the details of the contact person.

The name of the official's own business, if applicable.

The estimated number of hours per month/annum to be spent on after-hours private work.

Any hazardous or stressful circumstances that may negatively impact on the employees' health.

Whether any conflict of interest is possible.

(c) The following conditions, where applicable, must be taken into account when an application is considered and will, if such application is approved, apply as conditions for approval:

The proposed private work may not interfere with the employee's normal official duties and/or cause a conflict of interest of whatever nature to arise.

The proposed private work must take place entirely outside the employee's prescribed hours of work, authorized vacation leave excluded.

The proposed private work may not be of such a nature that it is detrimental to the relationship between the employer and the employee or causes the employee to violate the Code of Conduct for Municipal Staff Members.

Municipal resources may under no circumstances be used in the performance of the envisaged private work.

Permission to perform the envisaged private work is valid for a period of one (1) year only, provided that, if the employee wishes to continue performing the private work after the said one (1) year has passed, he/she must renew the application to do so for the following one year, at least thirty (30) days prior to the expire of the first year, in which case the stipulations of paragraph 6.1 will apply without change. This procedure is repeated each and every following year for as long as the employee concerned wishes to continue with his/her private work. Should the nature of the private work or any other circumstances related to the private work change in between, a revised application should be submitted.

Disciplinary action, in terms of the Disciplinary Procedure and Code Collective Agreement and/or in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings will be taken against an employee:

Who performs private work outside his/her official duties at the District Municipality without prior written permission.

Who, after permission has been given to perform private work, in the opinion of the employer violates or does not comply with any stipulations or conditions as stated in this policy.

The employer retains the right at any time to withdraw permission given in terms of the stipulations of this policy to an employee, on condition that the reasons given are justified and reasonable.

Permission may not be granted retrospectively to an employee to perform private work outside his/her official duties at the District Municipality.

The Division: Human Resources must keep a register of employees who perform remunerated work outside their official duty at the District Municipality. The register must contain the following information:

Name and surname;  
Staff number;  
Job title;  
Department;

Division;  
Application for remunerated work approved/denied;  
Period for which permission was granted;  
Name of the (outside) employer, type of work, nature of work and contact details; and  
Starting date of private work.

## **6.2 Application for and Approval of Private Work**

Applications for private work must be submitted in writing to the Division: Human Resources, accompanied by a recommendation by the applicable Head of Department. A copy of the application with the decision of the competent authority must be filed on the employee's personal record.

An application to do private work by the Municipal Manager must be approved or refused by the Executive Mayor in consultation with the Deputy Executive Mayor of the Council of the Cape Winelands District Municipality.

Applications to do private work by any other member of staff must be approved by the Municipal Manager.

## **6.3 Implementation and Monitoring of Private Work**

All employees are to apply afresh annually, even if current approvals are in place. Such applications must be submitted to the Division: Human Resources.

Individual approvals will be granted for twelve (12) months, which cycle will run from the date of approval by the Municipal Manager, where after the approval will automatically lapse.

In the event of an application not being approved, the Municipal Manager shall provide reasons for the decision.

A perceived unfair decision by the Municipal Manager may be challenged by way of the grievance procedure negotiated in the Bargaining Council established for municipalities.

Any false or materially significant withheld information will lead to the Municipal Manager's approval being withdrawn and, should circumstances so dictate, also to disciplinary action being instituted against the employee.

Should the Municipal Manager at any time determine that the private work interferes with the employee's activities for and on behalf of the Cape Winelands District Municipality (CWDM), the Municipal Manager may withdraw permission granted.

## **7. CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER ROLE PLAYERS**

### **7.1 General Principles**

- (a) The Cape Winelands District Municipality (CWDM) commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in supply chain management (SCM) are in a position of trust, implying a duty to act in the public interest. Officials and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or provider/contractor for themselves, their family or their friends.
- (b) Officials and other role players involved in supply chain management should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.
- (c) Officials and other role players involved in supply chain management should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.

### **7.2 Conflict of interest**

An official or other role player involved with supply chain management –

Must treat all providers and potential providers equitably.

May not use his or her position for private gain or to improperly benefit another person.

May not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350.

Must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person.

Must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process, or in any award of a contract by the Cape Winelands District Municipality (CWDM).

Must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest.

Must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest.

Should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties.

Should not take improper advantage of their previous office after leaving their official position.

### **7.3 Accountability**

Practitioners are accountable for their decisions and actions to the public.

Practitioners should use public property scrupulously.

Only accounting officers or their delegates have the authority to commit the Cape Winelands District Municipality (CWDM) to any transaction for the procurement of goods and/or services.

All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.

Practitioners must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system.

Practitioners must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including:

- (i) any alleged fraud, corruption, favouritism or unfair conduct;
- (ii) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and
- (iii) any alleged breach of this code of conduct.

Any declarations made must be recorded in a register which the accounting officer must keep for this purpose. Any declarations made by the accounting officer must be made to the Executive Mayor who must ensure that such declaration is recorded in the register.

#### **7.4 Openness**

Practitioners should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only if it is in the public interest to do so.

#### **7.5 Confidentiality**

Any information that is the property of the Cape Winelands District Municipality (CWDM) or its providers should be protected at all times. No information regarding any bid/contract/bidder/contractor may be revealed if such an action will infringe on the relevant bidder's/contractor's personal rights.

Matters of confidential nature in the possession of officials and other role players involved in supply chain management should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions also apply to officials and other role players involved in supply chain management after separation from service.

#### **7.6 Bid Specification/Evaluation/Adjudication Committees**

- (a) Bid specification, evaluation and adjudication committees should implement supply chain management on behalf of the Cape Winelands District Municipality (CWDM) in an honest, fair, impartial, transparent, cost-effective and accountable manner.
- (b) Bid evaluation/adjudication committees should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of supply chain management in order to perform effectively and efficiently.
- (c) All members of bid adjudication committees should be cleared by the accounting officer at the level of "CONFIDENTIAL" and should be required to declare their financial interest annually.
- (d) No person should -
  - (i) interfere with the supply chain management system of the Cape Winelands District Municipality (CWDM); or
  - (ii) amend or tamper with any price quotation/bid after its submission.

## **7.7 Combative Practices**

Combative practices are unethical and illegal and should be avoided at all cost. They include but are not limited to:

Suggestions to fictitious lower quotations.

Reference to non-existent competition.

Exploiting errors in price quotations/bids.

Soliciting price quotations/bids from bidders/contractors whose names appear on the Register for Tender Defaulters.

## **8. DECLARATION OF INTEREST(S)**

In terms of the following legislation, employees who have a business interest in any number of companies or close corporations as well as employees whose spouse, partner or business associate or close family member acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose in writing, full particulars of the business interest and/or the benefit to Council:

### **8.1 Code of Conduct for Municipal Staff Members**

In terms of Item 2(d) of the Code of Conduct for Municipal Staff Members as contained in Schedule 2 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) a staff member of a municipality must act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

### **8.2 Personal Gain**

In terms of Item 4(3) of the Code of Conduct for Municipal Staff Members as contained in Schedule 2 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) no staff member of a municipality may be a party to or beneficiary under a contract for the provision of goods or services to any municipality; and

In terms of Section 81(5) of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) no staff member of a municipality may share in any profits or improperly receive any benefits from a service provider providing a municipal service in terms of a service delivery agreement.

### **8.3 Disclosure of Benefits**

In terms of Item 5(1) of the Code of Conduct for Municipal Staff Members as contained in Schedule 2 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) a staff member of a municipality who, or whose spouse,

partner, business associate or close family member acquired or stands to acquire any direct benefit from a contract concluded with the municipality must disclose in writing full particulars of the benefit to Council.

#### **8.4 Ethical Standards for Supply Chain Management Practitioners and other Role Players**

In terms of Regulation 46(1)(a) of the Municipal Supply Chain Management Regulations, 2005 a supply chain management policy must establish a code of ethical standards for officials and other role players in the supply chain management system in order to promote mutual trust and respect and create an environment where business can be conducted with integrity and in a fair and reasonable manner in order to promote effective, efficient, impartial, fair and equitable and ethical municipal service delivery.

#### **8.5 Prohibition on Awards to Persons in the Service of the State**

- (a) In terms of Regulation 44 of the Municipal Supply Chain Management Regulations, 2005, the supply chain management policy of a municipality must, irrespective of the procurement process followed, state that the municipality may not make an award to a person who is in the service of the state, or a person, if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state or a person who is an advisor or consultant contracted with the municipality.
- (b) This implies that no municipal employee may render quotations and/or tenders to the municipality and/or other municipalities if you are a director, manager, principal shareholder or stakeholder of any form of entity, that municipalities may not make any award to.

#### **8.6 Awards to Close Family Members of Persons in the Service of the State (Related Parties)**

- (a) The municipality must keep record of all awards made to individuals who are a related party of a staff member in the service of the municipality.
- (b) This means that if your grandparents, parents, uncles/aunts, spouse (domestic partner), children & spouses (domestic partners), grandchildren & their spouses (domestic partners), siblings & their spouses (domestic partners), nephews & nieces, parents-in-law, brother-in-law, sister-in-law, renders quotations and/or tenders to the municipality and is successfully awarded the bid, exceeding R2,000, it must be disclosed in the financial statements of the District Municipality.

<b>WHO ARE RELATED PARTIES?</b>	
<b>A person or entity with the ability to control or jointly control another, or exercise significant influence.</b>	
<b>PERSON</b>	<b>ENTITY</b>
<b>A person is related to the Municipality if he/she or a close member of that person's family:</b>	<b>An entity is related to the Municipality when:</b>
<ul style="list-style-type: none"> <li>• Exercises control or joint control over the Municipality.</li> </ul>	<ul style="list-style-type: none"> <li>• The entity is part of the same economic entity.</li> </ul>
<ul style="list-style-type: none"> <li>• Has significant influence over the Municipality.</li> </ul>	<ul style="list-style-type: none"> <li>• One entity is an associate or joint venture of the other entity.</li> </ul>
<ul style="list-style-type: none"> <li>• Is a member of the management of the Municipality</li> </ul>	<ul style="list-style-type: none"> <li>• Both entities are joint ventures of a third entity.</li> </ul>
	<ul style="list-style-type: none"> <li>• Post-employment benefit plan for the benefit of the employees of the entity, or an entity related to the entity.</li> </ul>
	<ul style="list-style-type: none"> <li>• The entity is (jointly) controlled by a related person.</li> </ul>
	<ul style="list-style-type: none"> <li>• A person that (jointly) controls the entity has significant influence over that other entity or is part of its management.</li> </ul>



## **8.7 Rewards, Gifts and Favours**

- (a) In terms of Item 8 of the Code of Conduct for Municipal Staff Members as contained in Schedule 2 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) a staff member of a municipality may not request, solicit or accept any reward, gift or favour.
- (b) In terms of Regulation 46(2)(c) of the Municipal Supply Chain Management Regulations, 2005 the municipal code of ethics must stipulate that an official or other role player involved in the implementation of the supply chain management policy of the municipality may not accept any reward, gift, favour hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person.
- (c) Cognisance must be taken of the fact that a gift may not have a value of more than R350.00 and a favour includes hospitality from a provider or prospective provider of goods or services to the municipality.

Any gift or favour to the value of more than R350.00 must on receipt thereof be declared in the official gift register which can be obtained from the applicable Head of Department.

Heads of Department must declare any gift or favour to the value of more than R350.00 on receipt thereof in the official gift register which can be obtained from the Municipal Manager and the Municipal Manager must declare in the gift register at the Office of the Executive Mayor.

## **8.8 Annual Submission of Declarations by Officials**

All employees of the Cape Winelands District Municipality (CWDM) will annually be provided with the prescribed Declaration Form, which must be completed by all employees and submitted to the Division: Human Resources.

## **9. EFFECTIVE DATE**

The Private Work and Declaration of Interest(s) Policy will become effective upon approval thereof by the Council of the Cape Winelands District Municipality (CWDM).